This raises the question of whether, in the case of a lease, the lessor can be taken to have impliedly covenanted to put lessee in possession. The court in the above case, although it states that there is a conflict of authority, decides that the better rule is that such an implied covenant exists. It is true that when the lessee has been kept out of possession by a third person who is a stranger to the title, the courts do not agree. The English courts and some of the United States allow the lessee to recover. See *Coe* v. *Clay,* 5 Bing. 440; *Jenks* v. *Edwards,* 11 Exch. 775; *Carroll* v. *Peake,* 1 Pet. 18; *Hughes* v. *Hood,* 50 Mo. 350; *Herpolsheimer* v. *Christopher,* 76 Neb. 352; *Hertzberg* v. *Beisenbach,* 64 Tex. 263; *Rose* v. *Wynn,* 42 Ark. 257; *King* v. *Reynolds,* 67 Ala. 229. Other courts of the United States hold that the lessee's action should not be against the lessor, but rather against the person unlawfully in possession. See *Gardner* v. *Keteltas,* 3 Hill (N. Y.), 330; *Cozens* v. *Stevenson,* 5 Serg. & R. (Pa.), 421; *Pendergast* v. *Young,* 21 N. H. 234; *Gazzolo* v. *Chambers,* 73 Ill. 75; *Sigmund* v. *Howard Bank of Baltimore,* 29 Md. 324; *Playter* v. *Cunningham,* 21 Cal. 229; *Dodd* v. *Hart,* 30 Misc. (N. Y.), 459; *Underwood* v. *Birchard et al.,* 47 Vt. 305. When, however, the lessee is kept out of possession by the lessor himself or by a holder of paramount title, the courts seem to be agreed that the lessee may have his recovery. Concerning the question of exclusion by the lessor himself, see *Adair* v. *Bogle,* 20 Ia. 238; *Loufer* v. *Stottlemyer,* 16 Ind. App. 221; *Benington* v. *Casey,* 78 Ill. 317; and *Trull* v. *Granger,* 8 N. Y. 115. The principal case would seem to be to have been decided upon the ground that X, who contracted to convey to defendant, was not a holder of paramount title but a stranger to the title. No case has been found which directly covers the point. In *Ludwell* v. *Newman,* 6 Term. R. 458; *Cohn* v. *Norton,* 57 Conn. 480; *Friedland* v. *Myers,* 139 N. Y. 432; *Holder* v. *Taylor,* Hob. 12, and *McAlester* v. *Landers,* 70 Cal. 79, the holder of paramount title was a prior lessee. In *Mostyn* v. *West Mostyn Coal and Iron Co.,* 1 C. P. Div. 145, it appeared that the lessor had no means of obtaining title and had concealed this fact from the lessee. In *Grannis* v. *Clark,* 8 Cow. (N. Y.), 36, in which case the lessee was given a recovery upon the ground that he had been kept out of possession by a holder of paramount title, it appeared that the holder of paramount title was the one who had for years owned the land. As to whether or not, in the principal case, X is to be regarded as a stranger to the title or as a holder of paramount title might well depend, it would seem, upon the time at which, according to the terms of the contract, the defendant was to be given possession.

MALICIOUS PROSECUTION—WHAT CONSTITUTES PROBABLE CAUSE.—Defendant instituted a criminal proceeding against plaintiff upon the charge of having stolen manure. It transpired that plaintiff was innocent, and the charge was dismissed; the only question is whether the defendant had probable cause for instituting the criminal proceeding. The facts disclosed that B, who actually saw the man who stole the manure, told defendant that the man said he came from Gardenville; that he had a bay team and certain kind of wagon; and that "he was a tall man with light complexion." T, who worked for B, told an employee of defendant "that a man by the name

of John Galley took the manure," and that the man who took it had a bay team and was a "tall man, sandy mustache," and that employee communicated this information to defendant. Another person informed the defendant that plaintiff answered the description given by T, whereupon, without interviewing T, the defendant caused plaintiff to be arrested. It appeared as a matter of fact that plaintiff did answer to this very general description, in that he was tall and had a sandy mustache, but he was not the owner of any bay team. The trial court held that the question of probable cause was one of fact for the jury to decide, but the Appellate division decided that as a matter of law lack of probable cause was not established by plaintiff, and dismissed the action. On appeal from the Appellate division, the Court of Appeals defines "probable cause" as such a state of facts and circumstances as would lead a man of ordinary caution and prudence, acting conscientiously, impartially, reasonably, and without prejudice upon the facts within his knowledge, to believe that the person accused is guilty; and holds that since the case was one where different persons of reasonable prudence and caution might draw different inferences from the undisputed facts, that the court could not say that defendant did or did not have probable cause, as a matter of law, for causing plaintiff's arrest, but must submit the question to the jury to decide as a matter of fact. *Galley* v. *Brennan* (N. Y. 1915), 110 N. E. 179.

It is clear that the court is correct in holding that the undisputed facts here did not as a matter of law show probable cause. 26 CYC. 24 defines probable cause as follows: "Probable cause means reasonable grounds for suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the accused is guilty of the offense with which he is charged," citing the following, among other cases: *Cook* v. *Proskey,* 138 Fed. 273; *Gates* v. *Union Saw Mill Co.,* 122 La. 437, 47 So. 761; *Lasky* v. *Smith,* 115 Md. 370, 80 Atl. 1010; the fact of plaintiff's innocence has no bearing on defendant's liability, as the question does not turn upon the actual innocence or guilt of the accused, but upon the prosecutor's belief of it at the time, upon reasonable grounds. *Bankell* v. *Weinact,* 91 N. Y. Supp. 107; *Anderson* v. *Howe,* 116 N. Y. 336; *French* v. *Smith,* 4 Vt. 363, 24 Am. Dec. 616; WEBB, POLLOCK ON TORTS, 393.

MUNICIPAL CORPORATIONS—COMMISSION PLAN OF CITY GOVERNMENT.—Subsequent to the regular election of city officers, the City of Kirksville adopted the provisions of the Act of the General Assembly (Laws of 1913, p. 517) permitting cities of the third class and others to operate under a commission plan of government. After complying with the provisions of this Act the city held an election, and a mayor and four councilmen were chosen, in whom was vested the legislative and administrative power of the city, and who passed a resolution which terminated certain city offices; among the officers dismissed was the plaintiff, who had been elected city marshal under the former city government. Plaintiff sues for salary alleged to be due him as marshal, setting up that the Act of the General Assembly was unconstitutional, as creating a fifth class of cities in violation of the